

The Sixtieth Anniversary of the French Constitution: Toward the Death of the Fifth Republic?

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On October 4, 1958, General De Gaulle promulgated the Constitution of the Fifth Republic. The current French Republic was born in 1958, out of what were then referred to as the “events” in Algeria. Charles de Gaulle seized [the opportunity of an attempted putsch in Algiers](#) to [return to power](#), [ambiguously and strategically](#) presenting himself as the savior of (French) Algeria (engaging later, after a war in which torture was widely practiced, in decolonization).

Was the Fifth Republic borne out of a *coup d'état*? This subject was once highly divisive. One of the most influential critical opponents of General de Gaulle, François Mitterrand, denounced the [“coup d'état permanent”](#) in 1964 by likening the return of De Gaulle on May 13, 1958, to the [December 2, 1851, coup](#) of Louis-Napoléon Bonaparte, arguing that the events of May 13 in Algeria had been preplanned. But time has passed, and Mitterrand [transitioned from the opposition to power](#), which he held for fourteen years. Since then, the question of whether the birth of the Fifth Republic was illegal has been settled in French contemporary constitutional doctrine as well as in history books: no, it was not a coup. However, at the time of the republic's sixtieth anniversary, a new book, challenging the commonly accepted legalist version of events, currently tops sales at Amazon France. Written by Grey Anderson, who was freshly awarded a PhD from Yale, it is entitled [The French Civil War, from the Gaullist coup to the End of the Secret Army Organization](#), with a subtitle borrowed from Freudian terminology: “The repressed origin of the Fifth Republic.”

The renewed interest in critically examining the origins of the Fifth Republic must be understood in the context of the regime's erosion of legitimacy. Criticized for its democratic deficit, as well as its [two-year-long implementation of a state of emergency](#) in France (including during the 2017 presidential election), many now call for a Sixth Republic. In the 2017 presidential election, [the three major left-wing parties](#) advocated for the drafting of a new constitution and a Sixth Republic, calling for a parliamentary system of government. What they shared was a dislike for the so-called [semi-presidential regime](#), a term ill-founded at best, which creates an all-powerful but irresponsible president. Maurice Duverger, who developed the concept of the semi-presidential system, himself dubbed the Fifth Republic [a “Republican Monarchy.”](#)

Indeed, the powerful president is politically irresponsible before the parliament, while having enormous executive power and [the discretionary power of dissolution](#) of the National Assembly. Although the opposite is written in the Constitution, the prime minister is in practice responsible to president, who can remove him at his

discretion, like in a monarchical government—but the prime minister is also, as in a parliamentary system, responsible to parliament. This double responsibility is the primary characteristic of a “limited monarchy,” of the type France experienced after the French Revolution and the Napoleonic Episode, with the [1814 Charter](#). According to [Articles 20 and 21 of the Constitution](#), the prime minister governs—but in practice, the country has always been ruled by the president. Although there have been [episodes of cohabitation](#), they have been very limited (only nine years out of sixty). The French Fifth Republic is not semi-presidential, but rather hyperpresidential.

This presidentialization was set in motion in 1962 by De Gaulle’s [introduction of the direct election of the president](#) by universal suffrage, but it was also deepened recently by institutional changes in the electoral calendar placing the parliamentary election not midterm to act as a check on power or before the presidential election to frame it, but rather a couple of weeks after it to create an assembly under executive control. In the brief period between the presidential and parliamentary elections, the president’s message is clear—“You have elected me. Now give me an assembly that allows me to govern”—and French voters comply, with no possibility to hold the president accountable before the next parliamentary-presidential set of elections. Last summer, mired in [the Benalla scandal](#), the president [replied](#): “The only person responsible is me and me only. Let them come to get me.” Although it remains unclear who the president asked to “come,” it is certainly not the parliamentarians, as parliament cannot actually “get him” except in exceptional cases of [“breach of his duties patently incompatible with his continuing in office”](#), nor can the courts, as he enjoys [full immunity](#).

Notwithstanding the tragic Vichy interlude, France has lived under a republic since Napoleon III’s defeat at [Sedan in 1870](#). Yet in 2017, France witnessed the election a president who does not hide his [“nostalgia for the monarchy,”](#) vowing to “fill the void” left in French people’s hearts by the absence of the king, a king they [“never wanted to die”](#). Indeed, the Fifth Republic has monarchist, Bonapartist, and even Caesarist features. It was born in dubious legality, tailor-made for a “National Savior,” legalized *a posteriori* through a referendum, and amended through plebiscites.

Today marks the sixtieth anniversary of the French Constitution. Many may praise it as remarkably durable, about three times as durable as [the average length of a constitution](#), but this alone does not prove sufficient to mask the erosion of legitimacy of the current Constitution due to the hyper-presidentialization it creates.

From the 1789 revolution to the consolidation of the Third Republic, [French constitutional history](#) is often described as a struggle between two forces, the first attached to the predominance of parliament, the second to the preeminence of the executive, most notably through the use of plebiscite. French historian François Furet sees in French constitutional history [a dialectic between revolutionary and traditional ideas](#). It can also be read as an alternation between periods of “separation of powers” and “confusion of powers,” times of parliamentary empowerment followed by the revenge of the executive. French jurist Maurice Hauriou theorized [the “constitutional cycles”](#) of French constitutional history as being characterized by the following sequence: a “government by assembly” (a unique assembly being

supreme), then a presidential or dictatorial regime, and finally a parliamentary regime of equilibrium. From 1789 to 1848, France have seen the succession of a regime dominated by a unique assembly (1789-1793), followed by a revenge of the executive power under Napoléon Bonaparte (1795-1814), leading to the establishment of a parliamentary monarchy (1814-1848). Maurice Hauriou identifies a second cycle from 1848 to 1875 (dominance of the constituent assembly in 1848, presidential system with the 1848 Constitution followed by the Second Empire, and ending in the chaotic establishment of the parliamentary system of the Third Republic).

Succeeding to the Third Republic, the Fourth Republic, which only lasted 11 years, experienced 24 governments, most of them brought down in a couple of weeks by the Assembly. General De Gaulle abhorred the Regime [from the very beginning](#). The system he had approved in 1958 as the Fifth Republic was indeed designed as an “executive reaction” to the “over-parliamentarization” of the Fourth.

Now, will the unprecedented concentration of powers currently in the hands of Emmanuel Macron prompt the end of the current “revenge of the executive,” leading to the establishment of a parliamentary system in France, namely of a Sixth Republic?

